

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 122011-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 15th day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 22, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on June 29, 2011.

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Office of Financial and Insurance Services received BCBSM's response on October 19, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefit Certificate* (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner had spinal surgery in 1998 and recently underwent a second spine surgery. She has ongoing pain and has been using a massage chair to relieve the pain. Her physician requested durable medical equipment (DME) coverage from BCBSM for the chair as a healthier option than narcotics to relieve her pain.

BCBSM denied coverage. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on April 28, 2011, and issued its final adverse determination on May 27, 2011, affirming their denial of coverage.

III. ISSUE

Did BCBSM correctly deny coverage for the massage chair under the terms of the certificate?

IV. ANALYSIS

Petitioner's Argument

Petitioner believes this chair is the best option to treat her back pain. Petitioner believes that the use of the chair allows her muscles to relax and may keep her from becoming paralyzed.

In a letter dated September 29, 2010, Petitioner's doctor wrote:

I am writing to request insurance authorization for a massage chair for [Petitioner]. In 1998 she had anterior cervical discectomy and fusion at C-6 & C-7, and recently had anterior cervical discectomy and fusion at C-4 through C-6 for adjacent level disease and advanced degenerative changes. I feel the massage chair is medically necessary to help manage her chronic pain and to help improve her spinal movement and circulation to the cervical spine. The massage chair helps her regain the flexibility she has lost during surgery, and reduce muscle tension which can help reduce the risk for spinal re-injury.

* * *

[Petitioner] is not interested in talking narcotic pain medication to help reduce her pain and would like to continue the use of the massage chair which she feels is a healthier option. She currently still complains of right sided numbness to her neck with neck stiffness and the massage chair helps reduce her symptoms. She has tried physical therapy in the past without much success. She has difficulty completing everyday household chores, and has a difficult time sleeping without the use of this chair. Her muscles get very tense just trying to complete daily household chores, and when the pain gets so intense she suffers from severe migraine headaches. The massage chair helps reduce the tension in her neck and also helps with her migraine headaches.

BCBSM's Argument

In its final adverse determination, BCBSM denied coverage for the massage chair stating:

[Y]ou are covered under the *Community Blue Group Benefits Certificate* which explains we cover the same items covered by Medicare Part B as of the date of

purchase or rental. Our medical consultants previously reviewed your medical records and determined this service did not meet criteria. Per Medicare Durable Medical Equipment Policy, the INADA Sogno Massage Chair is not a covered benefit. Therefore, payment cannot be approved.

Medicare explicitly excludes massage devices from coverage. BCBSM believes that it correctly denied coverage for the Petitioner's massage chair because it does not meet Medicare's DME criteria for payment.

Commissioner's Review

The certificate provides coverage for DME which meets BCBSM and Medicare guidelines. Section 5 of the Petitioner's certificate (page 5.2) contains the following provision:

Durable Medical Equipment

We pay our approved amount for rental or purchase of durable medical equipment when prescribed by a physician or certified nurse practitioner and obtained from a DME supplier who meets BCBSM qualification standards. In many instances we cover the same items covered by Medicare Part B as of the date of purchase or rental. In some instances however, BCBSM guidelines may differ. Please call your local customer service center for specific coverage information.

DME items must meet the following guidelines:

- The prescription includes a description of the equipment and the reason for the need or the diagnosis.
- The physician writes a new prescription when the current prescription expires; otherwise, we will stop payment on the current expiration date, or 30 days after the date of death, whichever is earlier.

* * *

We do not pay for:

- Comfort and convenience items, such as bed boards, bathtub lifts, overbed tables, adjust-a-beds, telephone arms or air conditioners

* * *

- Self-help devices not primarily medical in nature, such as sauna baths and elevators

In support of its decision, BCBSM cited the *Medicare National Coverage Determinations Manual*, section 280.1, "Durable Medical Equipment Reference List" which provides an extensive list of DME which is covered or excluded. The list includes the following:

Massage Devices Deny — personal comfort items, not primarily medical in nature

A massage device such as the INADA Sogno Massage Chair is not covered by Medicare. Consequently, the chair is not a covered benefit under BCBSM's certificate. While the Petitioner's massage chair was recommended by her doctor and may provide the Petitioner relief from her symptoms, it does not meet the requirements for coverage under the BCBSM certificate.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of May 27, 2011, is upheld. BCBSM is not required to provide coverage for the requested INADA Sogno Massage Chair.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner